

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4782 OF 1995

Vasantdata Shetkari Sahakari Sakhar
Karkhana Limited. Petitioner

Versus

1. The State of Maharashtra
2. The Competent Authority and
Deputy Collector, Urban Land
Ceiling Act, Sangli.
3. The Collector of Sangli,
District Sangli.
4. Sidram Sattappa Daphalapure,
since deceased through his legal
heirs and representatives :
 - a) Shivalingava Sidram Daphalapure
 - b) Shantadevi Chanbasappa Mahajan. .. Respondents

Mr.S.G. Surana for petitioner.

Mrs.M.P. Thakur, AGP for res.Nos.1 to 3.

Mrs.Anjali Helekar for res.Nos.4(a) & 4(b).

CORAM : H.L. GOKHALE &
J.H. BHATIA, JJ.

DATED : 11th July 2006

ORAL JUDGMENT : (Per H.L.Gokhale, J.)

1. Heard Mr.Surana in support of this
petition. Mrs.Thakur, AGP appears for respondent
Nos.1 to 3 and Mrs.Helekar for respondent No.
4(b).

2. (i) The petitioner herein is a Co-operative Sugar factory registered under the Maharashtra Co-operative Societies Act and functioning in Sangli District. Original respondent No.4 owned certain agricultural lands bearing Survey Nos.152/1B and 152/2 in the erstwhile village Sangli, which is now a part of the Sangli Municipal Corporation.

(ii). Respondent No.4 has since expired and his wife i.e. respondent No.4(a) and his married daughter respondent No.4(b) were joined as the respondents to this petition. We are told that respondent No.4(a) has subsequently expired and respondent No.4(b) has contested the petition.

3. Brief facts leading to the filing of this petition are as follows:-

. The Urban Land (Ceiling and Regulation) Act, 1976 ("the ULC Act" for short) covered the urban agglomeration of Sangli City. The Act came into force on 17th February 1976 and thereupon respondent No.4 filed the requisite statement under Section 6(1) of the ULC Act on 13th April 1976. In his statement he showed these two parcels of lands as the agricultural lands.

Subsequently the competent Authority under the ULC Act i.e. respondent No.2 herein prepared a draft statement and called upon the original respondent No.4 to file objections under Section 8(3) of the ULC Act. After considering the objections, the competent Authority held on 30th October 1978 that respondent No.4 was holding excess vacant land admeasuring 17163.60 sq. meters. Accordingly, the order was published in the Government Gazette on 19th April 1979.

4. The competent Authority called upon respondent No.4 to hand over the possession on 17th January 1986 and took possession on 29th January 1986. Thereupon the land was allotted to the petitioner-Karkhana and the petitioner-Karkhana was put in physical possession. The petitioner-Karkhana was required to pay the purchase price under Section 11 of the ULC Act which was calculated at Rs.1,20,831.75. The petitioner deposited the amount with the Authorities concerned. It is material to note that the petitioner-Karkhana has also used this land after obtaining possession only for agricultural purpose, though as stated by Mr.Surana, learned Counsel appearing for the petitioner-Karkhana, the Karkhana has brought

about improvements in the said parcels of lands.

5. Respondent No.4 filed an Appeal being Appeal No.4 of 1993 challenging the order dated 30th October 1978 passed by the competent Authority. Respondent No.3 partly allowed the Appeal and remanded it back to respondent No.2 for deciding it afresh in accordance with law. The competent Authority had a fresh look at the matter and took the view that the land was an agricultural land and directed that possession thereof be restored to respondent No.4. This order was passed on 21st October 1994. The petitioner-Karkhana preferred an Appeal against that order to respondent No.3-Collector who is the Appellate Authority and the Appeal came to be dismissed by the impugned order dated 23rd July 1995. The present petition seeks to challenge that order. It was admitted on 10th October 1995 and interim order was granted in terms of prayer clauses (c) and (d) whereby the enforcement of the impugned order has been stayed and the peaceful use and enjoyment of the suit land by the petitioner has been continued. This has been on the condition that the petitioner does not create any third party interest.

6. It has so transpired that thereafter when the matter came up before another Division Bench for final hearing on 7th March 2006, the Division Bench passed an order appointing a Committee of three members consisting of Additional Collector, Sangli, Deputy Collector, Sangli-Miraj-Kupwada Municipal Corporation and the Tahsildar, Miraj, to record findings on the question with respect to the status of the subject land at the relevant time. The Committee has made its Report on 13th April 2006 and has given its findings to the following effect:-

" Finding of the Committee may be submitted for kind perusal of the Hon. High Court in short is as below:

1. Survey number 152 (survey number 152/1 & 152/2 sub-division of survey number 152) are in Sangli Municipal Council area as on 17/2/76.

2. As per Master Plan sanctioned by the Government on 19/1/1966 survey number 152 was in Sangli Municipal Council area but not included in Master Plan.

3. As per the draft development plan published on 6/1/1972 survey number 152 was in Sangli Municipal Council area and shown in residential zone.

4. Above draft development plan was finally sanctioned by the Government on 28/3/1977 in which survey number 152 was included in agriculture zone."

7. During the pendency of this petition, the petitioner took out one Civil Application bearing No.651 of 2006 to add certain grounds and prayer which are objected by Mrs.Helekar appearing for respondent 4(b). However, in the interest of justice, we have allowed them by passing a separate order.

8. Mr.Surana, learned Counsel appearing for the petitioner-Karkhana, submitted that what is material is the date on which the Act came into force. That date is 17th February 1976. According to him, on that date the concerned parcels of lands were notified in the residential zone as per the draft development and, therefore, the Authorities concerned were in error in holding that they form part of the agricultural land and,

therefore, will have to be excluded while calculating the vacant land. In this behalf, he relied upon a judgment of the Apex Court in the case of **Atia Mohammadi Begum (Smt) vs. State of U.P. & ors. reported in (1993) 2 SCC 546** wherein the Apex Court held that the Authorities cannot by any action, after the Act came into force, increase the area of excess vacant land or decrease or alter it in any manner whatsoever. It is further held that the vacant land will have to be determined as on the date on which the Act came into force i.e. on 17th February 1976 and not any time thereafter.

9. As far as this position is concerned, it has been clarified by the Apex Court in its subsequent judgment in the case of **State of A.P. & ors. vs. N.Audikesava Reddy & ors. reported in (2002) 1 SCC 227**. In paragraph 14 the Apex Court in terms held that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, Atia Begum's case (supra) is not correctly decided. What is material to note is that in the instant case the master plan has been sanctioned on 28th

March 1977 and under it survey No.152 was included in agricultural land. The original Authority which decided the statement filed by respondent No.4 arrived at its decision subsequent thereto i.e. on 30th October 1978. As on that date the master plan of the town was clear, namely, that this parcel of land was not in the residential zone but was in the agricultural zone. That being so, the Authorities cannot be faulted in coming to the conclusion that they have arrived at, and the arguments advanced by Mr.Surana, cannot be accepted.

10. For the reasons stated above, we do not find any merit in the petition. The petition, therefore, stands dismissed. Interim order will stand vacated. Rule discharged accordingly.

11. Mr.Surana appearing for the petitioner makes a request that since the petitioner is in possession of the land for last over 20 years, the interim order granted by this Court during the pendency of the petition, be continued for a further period of eight weeks so as to enable the petitioner to challenge the order passed by this Court. Mrs.Helekar appearing for respondent No.4(b) objects to this request. In any case, the

procedure to take possession will also take its own time and that being so, we accept the request of Mr.Surana. The interim order granted by this Court will continue to operate for a further period of eight weeks hereafter.

12. Mr.Surana points out that when the purchase price was determined, the petitioner deposited the amount of Rs.1,20,831.75 with the Authorities concerned. It is, however, seen from the order dated 21st October 1994 passed by the competent Authority that respondent No.4 has not collected the compensation deposited. That being the position, it will be open to the petitioner to claim this compensation amount lying with the State Government. Mrs.Helekar on the other hand submits that during the last 20 years the petitioner has made use of this land and respondent No.4(b) has in fact suffered because the land was not available for her family for cultivation. It will be open for respondent No.4(b) to claim mesne profits on that footing, if she so desires by taking appropriate steps in that behalf.

13. Mr.Surana states that the amount deposited with the State Government will not be withdrawn

until the possession of the land is handed over.

14. There will be no order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)